

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DENNIS F., CAROL F., GRACE F., ) Case No. 12-cv-02819-SC  
MARK P., KESTREL P., MAURA T., )  
EDWARD T., EMILY T., ED L., and ) ORDER FOR SUPPLEMENTAL  
MINDY L., ) BRIEFING RE: CLASS  
Plaintiffs, ) CERTIFICATION  
v. )  
AETNA LIFE INSURANCE, )  
Defendant. )  
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Now before the Court is Plaintiffs' motion for class certification. The motion is essentially predicated on the allegation that Defendant adopted an erroneous policy of tabulating patients' LOCAT scores. Specifically, Plaintiffs take issue with the way in which Defendant tabulated the total LOCAT Scores for Dimension III and Dimension V. For each of these dimensions, Defendant assigned a score of either "0" or "1," depending on whether a patient had a score of "3" or greater in any sub-dimension. Plaintiffs assert that the total score for Dimension III should be equivalent to the highest sub-dimension score in that

1 dimension. Plaintiffs assert that the total score for Dimension V  
2 should be tabulated in the same way. Alternatively, Plaintiffs  
3 assert that Defendant should have scored Dimension V by taking the  
4 sum of the scores of Dimension V's three sub-dimensions. The focus  
5 of the class is Defendant's alleged failure to correctly tabulate  
6 LOCAT scores, not Defendant's alleged errors in evaluating medical  
7 records. However, if the class is not certified, Plaintiffs have  
8 reserved the right to argue that Defendant improperly evaluated  
9 their conditions.

10 While the Court is not prepared to render a judgment on the  
11 merits of Plaintiffs' class claims at this time, the Court is  
12 concerned with Plaintiffs' interpretation of the LOCAT Scoring  
13 Form. The LOCAT Scoring Forms submitted by Plaintiffs indicate  
14 that "24" is the highest LOCAT score a patient can possibly  
15 receive. See Mot. Ex. 7 (indicating that a patient may qualify for  
16 inpatient care if that patient receives a score of "11-24").  
17 Defendant's interpretation of the LOCAT Scoring Form also yields a  
18 possible high score of "24" -- a patient could receive high scores  
19 of "20," "1," "1," "1," and "1" for Dimensions I through V,  
20 respectively. However, Plaintiff's interpretation yields a high  
21 score of "42" -- a patient could receive high scores of "20," "1,"  
22 "5," "1," and "15" for Dimensions I through V, respectively.<sup>1</sup>  
23 Thus, Plaintiffs' interpretation of the LOCAT Scoring Form could  
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26 <sup>1</sup> A patient could receive a total Dimension V score of "15" (and  
27 thus a total LOCAT score of "42") if the sub-dimensions scores for  
28 Dimension V are added together. Alternatively, if the total score  
for Dimension V is equivalent to the highest sub-dimension score,  
with "5" being the highest possible sub-dimension score, a patient  
could receive a total LOCAT score as high as "32."

1 yield a LOCAT score which is almost double the highest possible  
2 score identified by the form itself.

3 Given this inconsistency, it is unclear if Plaintiffs can  
4 prevail on class claims predicated on their interpretation of the  
5 LOCAT Scoring Form. While neither party has asked the Court to  
6 rule on the merits of Plaintiffs' class claims, determination of a  
7 motion for class certificate "generally involves considerations  
8 that are enmeshed in the factual and legal issues comprising the  
9 plaintiff's cause of action." Wal-Mart Stores, Inc. v. Dukes, 131  
10 S. Ct. 2541, 2552 (2011). Moreover, the Court is concerned about  
11 the possibility of certifying a class that has little chance of  
12 succeeding on the merits, especially since Plaintiffs might have a  
13 better chance of success if they merely challenged Defendant's  
14 individual decisions concerning the medical necessity of RTC care,  
15 claims which Plaintiffs have waived by proceeding as a class  
16 action.

17 Accordingly, the Court requests supplemental briefing on (i)  
18 whether the LOCAT Scoring Forms or any of the other evidence before  
19 the Court support Plaintiffs' interpretation of the LOCAT Scoring  
20 Forms, (ii) and how the concerns expressed above might affect  
21 Plaintiffs' motion for class certification. The Court also  
22 requests supplemental briefing on whether any Aetna members have  
23 been granted coverage for RTC care despite having a LOCAT Score  
24 that, according to the LOCAT Scoring Form, was too low to justify  
25 that level of care. Finally, the Court requests that Plaintiffs  
26 provide a more exact definition of their proposed class that  
27 includes, time limitations, e.g., "Subclass 1 is comprised of those  
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1 Aetna participants and beneficiaries who submitted claims any time  
2 after January 1, 2008 . . . ."<sup>2</sup>

3 The parties shall submit their supplemental briefs within  
4 seven (7) days of the signature date of this Order. The  
5 supplemental briefs shall not exceed ten (10) pages.

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7 IT IS SO ORDERED.

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9 Dated: September 10, 2013

  
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26 UNITED STATES DISTRICT JUDGE

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28 <sup>2</sup> The Court notes that Exhibits 4 through 7 to Plaintiff's motion,  
the LOCAT Scoring Forms for Emily, Grace, and Mariah, are blurry  
and practically illegible. The Court requests that Plaintiffs  
submit legible copies of these exhibits, along with a legible copy  
of the LOCAT Scoring Form for Kestrel. These exhibits may be filed  
under seal.